



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

The evidence was discussed, as there were multiple copies of one half of the Notice of Hearing letter. The landlord said that he faxed into the Residential Tenancy Branch ("RTB") a copy of text messages between the parties and proof of the service of the hearing documents. The tenant did not submit evidence and did not raise an issue regarding service of the evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

A written tenancy agreement was not entered into evidence. I heard testimony that this month to month tenancy began on May 1, 2012 and ended on June 30, 2012, that the monthly rent was \$1500.00 and the tenant paid a security deposit of \$750.00 at the beginning of the tenancy.

The landlord's monetary claim is \$1500.00, for loss of revenue for July 2012.

The landlord said that the tenant did not provide a full month's notice of her intent to vacate the rental unit by June 30, 2012, as he received her notice on June 9, 2012, via text message. The tenant also provided her written forwarding address on that date.

When questioned, the landlord said that he was out of town when he received the text message, and was unable to place an advertisement on a popular free online website until June 11. The landlord did not supply evidence of the advertisement and when questioned as to specific dates, he said that "it would have been" on June 11 and that the ad was refreshed 2-3 times. When questioned, the landlord confirmed that he did not lower the rent in the advertisement.

In response, the tenant said that the landlord did not make any significant effort to re-rent the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant, the landlord in this case, must establish all of the following:

1. That there was damage or loss by the claiming party;
2. That the alleged damage or loss was due to the respondent's breach of the tenancy agreement or the Act or from negligence;
3. Verification or proof of the loss; and,
4. That the claimant took all reasonable steps to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In the case before me, the tenant communicated her notice to vacate in a text message to the landlord. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the oral evidence at the hearing and the landlord's confirmation that he accepted the text.

Although the Act does not recognize text message transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's notice to vacate through the June 9, 2012 text, with the landlord's confirmation, sufficiently served, pursuant to section 71 of the Act.

As to loss of revenue for July 2012, I accept that the tenant provided insufficient notice to end the tenancy early, by her failure to give notice in writing at least one clear month before the effective date of the notice to end.

I however find the landlord submitted insufficient evidence that he made attempts to mitigate his loss. In reaching this conclusion, I was influenced by the lack of proof of advertising of the rental unit or proof on any other methods of re-renting. The landlord provided no clear testimony of frequency or dates of the online advertising and without having documentary evidence to review, I therefore cannot conclude he took reasonable steps to minimize his alleged loss.

Additionally, I find another method to reduce the amount of alleged loss would be to lower the monthly rent of the rental unit, which the landlord failed to do.

As I find that the landlord submitted insufficient evidence of taking reasonable steps to minimize his loss, which is step 4 of his burden of proof, I therefore dismiss his application, without leave to reapply.

As I have dismissed the landlord's application, I decline to award him recovery of the filing fee.

Conclusion

The landlord's application is dismissed, without leave to reapply.

I direct the landlord to return to the tenant her security deposit of \$750.00.

I grant the tenant a final, legally binding monetary order in the amount of \$750.00, for the return of her security deposit and enclose the monetary order with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 01, 2012.

Residential Tenancy Branch